

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION**

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**On Appeal from the  
United States Bankruptcy Court  
for the Middle District of Georgia  
Macon Division**

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**5:05-CV-124 (WDO)**

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**RONALD WALLER  
and  
JOANN WALLER,**

**Appellants**

**v.**

**FIRST NATIONAL INVESTMENTS, LLC  
and  
ROBERT A. FRICKS, et al.,**

**Appellees**

**OWENS, J.**

Ronald Waller and Joann Waller appeal the bankruptcy court's findings that annulled the automatic stay in their underlying bankruptcy case and validated the foreclosure of their residential real property.

In the bankruptcy court below, First National sought and received retroactive annulment of the automatic stay to validate the subject foreclosure. The Wallers had moved for a stay of the proceedings pending appeal of the annulment and the bankruptcy

court denied the motion for a stay. The Wallers then appealed the bankruptcy court's denial of that motion. This Court affirmed the bankruptcy court's decision and later denied the Wallers' motion for reconsideration. See Waller v. First National, 5:05-MC-8 (CAR), U.S. District Court, Middle District of Georgia, Macon Division. The Wallers have now appealed the bankruptcy court's grant of retroactive annulment of the automatic stay.

When a creditor purchases property at a foreclosure sale, and the debtor failed to obtain a stay pending appeal, the failure to obtain a stay renders any appeal of the lifting of the stay moot. In re Sewanee Land, Coal & Cattle, Inc., 735 F.2d 1294 (11<sup>th</sup> Cir. 1984) (court finding itself powerless to grant any relief once the property is purchased through a foreclosure sale even if the purchaser is a party to the appeal). In the case at bar, both the bankruptcy court and this Court declined to stay the proceedings pending appeal and the property has been sold through foreclosure. Accordingly, this Court is powerless to grant the relief requested by the Appellants and this appeal is DISMISSED AS MOOT. Further, the Appellants' motion to stay the proceedings in this Court and motion for a hearing are DENIED AS MOOT. To the extent the Appellants have raised a claim that would not be rendered moot by the foregoing, the Court is without jurisdiction to make any substantive findings on the matters presently before the Eleventh Circuit Court of Appeals in the related case of Waller v. First National, 05-12038, wherein the Appellants appealed the initial denial of the motion to stay. Finally, because this Court is without jurisdiction to make any substantive findings on the stay at this time, the Appellees' request for sanctions is DENIED WITHOUT PREJUDICE.

The Appellants also requested the Court to furnish them, at no cost, with copies of various transcripts. Pursuant to 28 U.S.C. § 753(f), the Court may permit certain

transcripts to be provided to a party at no cost in a 28 U.S.C. § 2255 proceeding or if a party has been granted leave to proceed *in forma pauperis* ("IFP") on appeal. Appellants' motion to file the instant appeal IFP was denied and there is presently no notice of appeal or motion to proceed on appeal IFP before the Court. Accordingly, the request for transcripts is DENIED WITHOUT PREJUDICE.

**SO ORDERED this 25<sup>th</sup> day of May, 2005.**

**S/Wilbur D. Owens, Jr.  
WILBUR D. OWENS, JR.  
UNITED STATES DISTRICT JUDGE**